

REMARKS

Applicant requests favorable reconsideration of this application in view of the foregoing amendments and the following remarks. Claims 1-16 were pending in the application and were rejected in the Office Action. By way of this amendment, Applicant has: (a) cancelled claims 1-16, without prejudice or disclaimer; and (b) added new claims 17-28, without adding new matter. Accordingly, claims 17-28 are pending for further consideration.

1. Rejections of Claims 1-16

Under 35 U.S.C. § 102(b), the Examiner rejected claims 1 and 8 as allegedly being anticipated by U.S. Patent No. 4,415,059 ("Hayashi"). In addition, under 35 U.S.C. § 103(a), the Examiner rejected: (a) claims 2, 9, and 11 as allegedly being obvious when considering Hayashi in view of U.S. Patent No. 2,297,046 ("Bourne"); (b) claims 3, 10, and 12 as allegedly being obvious when considering Hayashi in view of G.B. 2,365,066 ("Coulon"); (c) claims 4 and 13 as allegedly being obvious when considering Hayashi in view of U.S. Patent No. 6,122,514 ("Burdisso"); (d) claims 5 and 14 as allegedly being obvious when considering Hayashi in view of Bourne and E.P. 0,445,431 ("DeLank"); (e) claims 6 and 15 as allegedly being obvious when considering Hayashi in view of Coulon and DeLank; and (f) claims 7 and 16 as allegedly being obvious when considering Hayashi in view of Burdisso and DeLank. Each of these rejections is now moot due to the cancellation herein of claims 1-16, without prejudice or disclaimer.

2. New Claims 17-28

New claim 17 (*i.e.*, the claim from which new claims 18-28 depend) recites a muffler that is configured to discharge exhaust from a machine having one of an engine and a compressor. This muffler includes, among other possible things (*italic emphasis added*):

- an outer muffler shell;
- a first exhaust tube;
- a tubular member formed inside the muffler shell, wherein a first end of the tubular member is in fluid communication with the first exhaust tube, *wherein a second end of the tubular member is in fluid communication with a space inside of the muffler shell*, and wherein the tubular member is configured to attenuate acoustic energy of a first frequency band;
- a resonator set that forms of a portion of the tubular member, wherein the resonator set is configured to attenuate acoustic energy of a second frequency band, which is different from the first frequency band and which modulates the first frequency band; and

a second exhaust tube configured to discharge exhaust in the space inside the muffler shell to the atmosphere.

As hereafter explained, no combination of Hayashi, Bourne, Coulon, Burdisso, and/or DeLank teaches or suggests the muffler recited in claim 17.

Hayashi teaches a muffler that includes an outer shell (66) and an inner tubular member (*i.e.*, the tube formed by inner shell plates 48, 50). *See* Hayashi at Fig. 2. Contrary to the first of the above-italicized limitations of claim 17, however, Hayashi's inner tubular member (48, 50) does not have a second end that "is in fluid communication with a space inside of the muffler shell." Rather, as shown in Figure 2 of Hayashi, both ends of Hayashi's inner tubular member (48, 50) extend beyond the outer muffler shell (66). This shortcoming of Hayashi defines a patentable first deficiency.

In addition to, and as a result of, the foregoing, Hayashi also fails to teach or suggest a second exhaust tube that is "configured to discharge exhaust in the space inside the muffler shell to the atmosphere." Even assuming, *arguendo*, that a second exhaust tube were to be attached to outlet passage 60, the second exhaust tube would only be configured to discharge exhaust from Hayashi's inner tubular member (48, 50) and conceivably from two of Hayashi's cavities (72, 74). However, as the first and second cavities (72, 74) are not in "fluid communication" with the second end of the inner tubular member (48,50), the cavities (72, 74) do not qualify as the "space" recited in claim 17. This shortcoming of Hayashi defines a patentable second deficiency.

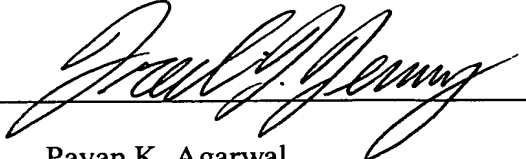
In light of the foregoing, it is clear that Hayashi fails to teach or suggest at least the two above-italicized limitations of claim 17. Moreover, Applicant respectfully submits that none of Bourne, Coulon, Burdisso, and DeLank cures these two deficiencies of Hayashi. As a result, no combination of Hayashi, Bourne, Coulon, Burdisso, and/or DeLank teaches or suggests the muffler recited in claim 17. Accordingly, Hayashi, Bourne, Coulon, Burdisso, and/or DeLank can not be used to reject claim 17, or any claim dependent thereon, under 35 U.S.C. §§ 102(b), 103(a). Moreover, as claims 18-28 depend from claim 17, each of these dependent claims is also allowable over Hayashi, Bourne, Coulon, Burdisso, and/or DeLank, without regard to the other patentable limitations recited therein. Accordingly, new claims 17-28 are allowable over Hayashi, Bourne, Coulon, Burdisso, and/or DeLank.

CONCLUSION

For the aforementioned reasons, claims 17-28 are now in condition for allowance. A Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact the undersigned if such communication would expedite the prosecution of the application.

Respectfully submitted,

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